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Transcript Exhibit(s)

Docket #(s): W-01451B-99-0351

W-01451B-99-0406

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Exhibit #: A5

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Arizona Corporation Commission

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## SETTLEMENT AGREEMENT

LEGAL DIV.  
ARIZ. CORPORATION COMMISSION

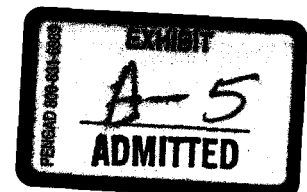
The purpose of this Settlement Agreement ("Agreement") is to settle issues related to Arizona Corporation Commission Docket Nos. W-01651B-99-0351 and W-01651B-99-0406, as reopened by the Arizona Corporation Commission ("Commission") on December 1, 2011. This Agreement is entered into by Vail Water Company ("Vail") and the Arizona Corporation Commission Utilities Division ("Staff"). Vail and Staff may be referred to as a "Party" and collectively, as the "Parties."

### Terms And Conditions

In consideration of the promises and agreements contained herein, the Parties agree that the following numbered sections and subsections comprise the Parties' Agreement.

#### **1. Recitals**

- 1.1 On December 1, 2011, the Commission voted to reopen this docket and Decision No. 62450 in order to defer the matter to the Hearing Division to take testimony to consider the Company's request for an extension of time to file its final plans for direct use of CAP water; to determine a plan to accomplish the direct use of CAP water in Vail's service area; to determine whether there should be any refund of CAP surcharges; and to determine whether to impose any penalties for violation of Decision No. 62450 for failure to file final plans by December 31, 2010.
- 1.2 By Procedural Order dated December 19, 2011, the Administrative Law Judge scheduled two hearing dates to address the different issues for which this docket and Decision No. 62450 was reopened.
- 1.3 On January 26, 2012, a hearing was held to address whether Vail should be authorized to use the surcharge funds currently held in trust to make upcoming CAP payments.
- 1.4 Following the January 26, 2012 hearing, Vail and Staff determined that discussions to discuss a resolution of the issues in this docket would be beneficial.
- 1.5 On February 8, 2012, the parties met in good faith at the Commission's offices to further discuss this matter and to exchange information relating to Vail's plans for direct use of CAP water in its service area and other issues relating to this docket.
- 1.6 By Procedural Order dated February 23, 2012, the second hearing date was rescheduled to March 29, 2012, to allow the parties additional time to discuss a possible resolution of this matter.
- 1.7 Following further telephonic discussions regarding this matter, the Parties again met in good faith on March 6, 2012, to continue to discuss a resolution of the issues for which this docket was reopened.



- 1.8 The Parties agree and represent their belief that the terms and conditions of this Agreement will serve the public interest by providing a just and reasonable resolution of the issues presented by this case.

## **2. Terms of Settlement**

- 2.1 Staff and Vail continue to support direct use of CAP water in Vail's service area as contemplated by Decision No. 62450.
- 2.2 Vail will not re-instate the currently authorized \$0.32 per thousand gallons CAP surcharge (unless such surcharge is reinstated as part of the Rate Case addressed in Section 2.4 below).
- 2.3 Vail will re-instate the currently authorized CAP hook-up fee. *upon decision*
- 2.4 On or before July 31, 2012, Vail will file a rate case using a test year for the 12 months ending December 31, 2011 (the "Rate Case"). This filing will comply with the rate case filing provision of Decision No. 62450. As part of the Rate Case, Vail will propose a surcharge to address costs relating to the CAP project in an effort to avoid the need for the filing of another rate case immediately after the conclusion of the Rate Case. Staff generally supports the concept of such a surcharge for amounts to be paid Tucson Water under a Wheeling Agreement, M&I and delivery charges, as well as other CAP-related cost components; however, Staff's final recommendation on such a surcharge is subject to Staff's examination of the actual surcharge application filed by Vail and Vail's financial information as part of the Rate Case.
- 2.5 The deadline for submission of final plans for the direct use of CAP water in Vail's service territory set forth in Decision No. 62450 will be extended to June 30, 2013.
- 2.6 Vail may use the surcharge and hook up fee funds currently held by Vail (and those future hook up fees to be collected as stated in Section 2.3) in the manner intended by Decision No. 62450, including, but not limited to: to permit, design, engineer, and construct and/or to acquire plant and equipment necessary to have CAP water delivered to its water system and to pay for on-going annual CAP M&I and delivery charges, legal fees, and costs associated with recharging water. These funds will not be subject to refund solely as a result of the Company's failure to file final plans by December 31, 2010; however, Staff reserves the right to examine the need for the use of these funds as part of the Rate Case and to continue to examine the prudence of all expenditures made from these funds.
- 2.7 Staff will not recommend that the Commission impose any penalty or fine solely as a result of Vail's failure to make the final plan submission by December 31, 2010, subject to Vail meeting the June 30, 2013 deadline as indicated above.

## **3. Commission Approval**

- 3.1 The Parties acknowledge and agree that the terms of this Agreement require Commission approval, and that the Commission will independently consider and evaluate the

terms of this Agreement. With respect to approval of this Agreement, the Parties agree as follows:

- (a) To support and defend the Agreement by providing testimony as required by the Administrative Law Judge, appearing at any and all hearings, open meetings or other proceedings in the docket related to the Agreement, and taking any and all other steps reasonably necessary to obtain Commission adoption of the material terms of the Agreement.
- (b) That a final, non-appealable Commission order adopting the material terms of this Agreement shall constitute Commission approval of the Agreement for purposes of the Agreement.

3.2 The Parties further agree that in the event the Commission fails to issue an order adopting all material terms of this Agreement or modifies or adds material terms to this Agreement, any or all of the Parties may withdraw from this Agreement, and such Party or Parties may pursue their respective remedies at law without prejudice. For the purposes of this Agreement, whether a term is material shall be left to the reasonable discretion of the Party choosing to withdraw from the Agreement.

#### **4. Miscellaneous Provisions**

4.1 With respect to the Parties' Agreement as set forth herein, the Parties further agree to the following general terms and conditions of their agreement:

- (a) Each person whose signature appears below is fully authorized and empowered to execute this Agreement.
- (b) Each Party is represented by competent legal counsel and that they understand all of the terms of this Agreement, that it has had an opportunity to participate in the drafting of this Agreement and fully review this Agreement with its counsel before signing, and that it executes this Agreement with full knowledge of the terms of the Agreement.
- (c) Nothing in this Agreement shall be construed as an admission by any of the Parties that any of the positions taken by any Party in this proceeding is unreasonable or unlawful. In addition, acceptance of this Agreement by any of the Parties is without prejudice to any position taken by any party in these proceedings.
- (d) This Agreement represents the Parties' *mutual desire to compromise* and settle in good faith certain issues in a manner consistent with the public interest. The terms and provisions of this Agreement apply solely to and are binding only in the context of the circumstances and those purposes. None of the positions taken in this Agreement by the Parties may be referred to, cited, or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except in furtherance of this Agreement.

- (e) All negotiations relating to this Agreement are privileged and confidential. No Party is bound by any position asserted in negotiations, except as expressly stated in this Agreement. The Parties expressly agree that evidence of conduct or statements made in the course of negotiating this Agreement shall not be offered and are not admissible before this Commission, any other regulatory agency, or any court.
- (f) Each of the terms and conditions of the Agreement is in consideration and support of all other terms. Accordingly, the terms are not severable except upon express consent of the Parties.
- (g) This Agreement may be executed in counterparts. This Agreement also may be executed electronically or by facsimile.


Executed this 23<sup>rd</sup> day of March, 2012.

**VAIL WATER COMPANY**

By: 

Its: President

**ARIZONA CORPORATION COMMISSION  
UTILITIES DIVISION STAFF**

By: 

Its: Utilities Division Director